

2018 Application - 181025627

Competitive Bidding

Issue:

USAC's Program integrity Assurance (PIA) team is currently reviewing your FCC Form471 application, and we have identified an issue that we need you to help us resolve

What is the issue?

FRN(s) 189908904 is/area request(s) for the type(s) of product dark fiber. Applicants consider seeking support for recurring charges associated With leased dark fiber and special construction charges associated with leased dark fiber must also-solicit bids-for the needed connectivity via leased lit fiber,. Applicants considering seeking support for self-provisioned networks must also solicit bids for: the needed connectivity via services provided over third party networks. Applicants must use an open and fair competitive bidding process that meets the additional competitive bidding requirements for leased dark fiber and self-provisioned networks in order to determine if the requested products and/or services are the most cost effective solution. (For reference, please read USAC's information at <http://usac.org/sl/applicants/step01/requirements-for-fiber.aspx>),

Please read all of the questions, descriptions, and requests below. Please give enough detail, insight, and clarity to help the reviewers fully understand your specific situation.

Check the boxes for statements that apply, and where applicable, type the information requested into the text boxes. If your information is too detailed for the text box, or, if you need to provide additional documentation, click "Browse" to upload relevant files or documentation.

Question(s)

This page will timeout after an extended period of inactivity. Please periodically save your work using the 'Save & Close' button below. You may then use your browser's 'Back' button to return to your work.

Please answer the following questions; check all options that apply and provide the documentation requested.

#	Question	Response
1	Please provide any and all amendments made to the original RFP(s)	No amendments were issued
	Please provide the number of bids received for each requested and equivalent type(s) of product	
2	Please specifically state both the type of product and the number of bids in your response (e.g. # of leased dark fiber bids received was: __, # of leased lit fiber bids received was: __ # of self-provisioned network bids received was: __)	1 Leased Dark Fiber 0 Leased Lit 0 Self-provisioned
3	Please provide complete copies of any and all bid responses received in response to the FCC: Form 470(s) and RFPs associated with the requested and equivalent type(s) of products.	Upload Q3-Bid Form.pdf
4	Please provide any other bid documentation such as attendance sheets from open meetings, disqualified bids, reasons for disqualification, notices sent to vendors, etc.,	Upload 2018_02-12 Pre-bid Sign In-Complete.pdf
5	Please provide your bid evaluation matrix(ces) or other documentation created during the bidding process that was used to select your requested type(s) of products:	Upload 2018_03-05 ScoringMatrix.pdf
6	Please provide a description of your bid evaluation process.	Upload 2018_03-05 Recommendation.pdf
7	Please provide a copy of all correspondence between your entity add any service providers or consultants regarding the competitive bidding process and the application process	Upload EMAIL-Trail.pdf

Prompt 2:

#	Question	Response
1	Please provide copy of cost comparison documents used to determine which option is the most cost effective option over a specific period of time	N/A – Mukilteo School District received only one response. As such, there were no comparison options.
2	Please provide an explanation of how the total cost of the requested type(s) of products were compared with the equivalent type(s) of products and provide any supporting documentation that was created during the cost comparison process.	
3	Did you consider costs associated with network equipment needed to light the fiber and maintenance and operation in your cost comparison?	No
.a	If yes, please indicate the dollar amount you estimated for network equipment and maintenance and operation costs. If no, please explain why.	
.b		Mukilteo School District already owns all required core and edge equipment required to completely light and operate this network. Equipment is current generation from first tier provider covered under lifetime warranty agreement. District staff are trained and possess a high degree of expertise in all testing, monitoring, and operational aspects of the installed equipment.
4	Please provide the specific period of time over which each option was compared based on the anticipated use of assets and provide any supporting documentation that was created during the bidding process.	N/A – In that only one option (leased dark) was responded to the need for comparison did not exist. It is anticipated that the installed base of Ethernet core and edger equipment will perform acceptably for a minimum of five additional years.

Competitive Bidding Question #1

No amendments were issued to the original RFP

MUKILTEO SCHOOL DISTRICT – RFP #2018MSD-RFP
FIBER OPTIC CABLE INFRASTRUCTURE

BID FORMS

NOTE TO BIDDER: Use preferably **BLACK** ink for completing this Proposal form.

To: Mukilteo School District
Debbie Truax
Director of Technology Operations
Address: 9401 Sharon Drive
Mukilteo, WA 98204

Project Title: FIBER OPTIC CABLE INFRASTRUCTURE

Bidder's person to contact for additional information on this Proposal:

Company: WaveDivision Holdings LLC. (d/b/a) Wave business

Contact Person: Jeff Stoner, Strategic Account Executive

Telephone: (206) 228-5568 Fax: (206) 538-0910

BIDDER'S DECLARATION AND UNDERSTANDING

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Proposal are those named herein, that this Proposal is, in all respects, fair and without fraud, that it is made without collusion with any official or representative of the Owner, and that the Proposal is made without any connection or collusion with any person submitting another Proposal on this Contract.

The Bidder further agrees that it has exercised its own judgment regarding the interpretation of subsurface information and has utilized all data which it believes pertinent from the Architect, Owner, and other sources in arriving at its conclusions.

The Bidder further declares that it has carefully examined Contract Documents for construction of the project, that it has inspected the site, that it has satisfied itself as to quantities involved, including materials and equipment, and conditions of work involved, including the fact that the description of quantities of work and materials as included in this Form of Proposal is brief and is intended only to indicate the general nature of the work and to correlate said quantities with detailed requirements in the Contract Documents, and that this Proposal is made according to provisions and under terms of the Contract Documents, which Documents are hereby made a part of this Proposal.

CONTRACT EXECUTION, BONDS & INSURANCE

The Bidder agrees that its Proposal shall not be withdrawn for a period of 45 days after bid opening. The Bidder further agrees that if this Proposal is accepted, it will, within 10 calendar days after receipt of Notice of Award, sign the Contract and deliver to the Owner evidence of its ability to obtain the required Performance and Payment Bonds and Certificates of Insurance, and will, to the extent of its Proposal, furnish all machinery, tools, apparatus, and other means of construction and do the work and furnish all the materials necessary to complete all work as specified or indicated in the Contract Documents. Within ten days after execution of the Contract, the Contractor shall deliver the required bonds to the Owner.

CONTRACT TIME

The School District intends to issue a Notice to proceed on or before March 16th, 2018 to begin work on-site. The Bidder agrees to complete Work not later than 115 days after the Date of Notice to Proceed, to Substantially Complete the Work within 85 calendar days after the date of the Notice to Proceed, and to Finally Complete work within 30 calendar days after Substantial Completion.

LIQUIDATED DAMAGES

MSD and Contractor recognize that time is of the essence of this Agreement and that MSD will suffer financial loss and public inconvenience if the Work is not completed within the times specified in this document, plus any extensions thereof. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by MSD if the Work is not completed on time. Accordingly, instead of requiring any such proof, MSD and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay MSD the sum of \$2,500 (\$ amount in numbers) for each Calendar Day that expires after the time specified in the Agreement for Substantial Completion until the Work is substantially complete.

MUKILTEO SCHOOL DISTRICT – RFP #2018MSD-RFP
FIBER OPTIC CABLE INFRASTRUCTURE

SALES AND USE TAXES

Prices quoted in the Proposal shall **NOT** include local and state sales taxes applied to the Owner's payments. The Owner will pay the local and state sales taxes directly to the Contractor based on the monthly progress pay estimate. All other taxes as required by the laws and statutes of the State and its political subdivision shall be paid by the Contractor.

ADDENDA

The Bidder hereby acknowledges that it has received Addenda No's. ____, ____, ____, ____, (Bidder shall insert No. of each Addendum received) and agrees that all Addenda issued are hereby made part of the Contract Documents, and further agrees that its Proposal(s) includes all impacts resulting from said addenda.

SCHEDULE OF BID PRICES

The Bidder, whose legal signature binding the Bidder to the bid process indicated on these pages is found on the signature page, hereby bids as follows:

Use numbers on first line and written amount on second line.

OPTION 1: LEASED LIT FIBER SERVICE – 36 Months		
One-time installation cost:	\$	No Bid
		Dollars
Monthly reoccurring cost	\$	No Bid
		Dollars

OPTION 1: LEASED LIT FIBER SERVICE – 60 Months		
One-time installation cost:	\$	No Bid
		Dollars
Monthly reoccurring cost	\$	No Bid
		Dollars

OPTION 1: LEASED LIT FIBER SERVICE – Additional 60 Months		
One-time installation cost:	\$	No Bid
		Dollars
Monthly reoccurring cost	\$	No Bid
		Dollars

MUKILTEO SCHOOL DISTRICT – RFP #2018MSD-RFP
FIBER OPTIC CABLE INFRASTRUCTURE

OPTION 2: LEASED DARK FIBER – 36 Months			
One-time installation cost:		\$	0.00
			Dollars
Monthly reoccurring cost	1 Strand Dark Fiber	\$	\$570.00
	2 Strands Dark Fiber		\$670.00
			Dollars

OPTION 2: LEASED DARK FIBER – 60 Months			
One-time installation cost:		\$	0.00
			Dollars
Monthly reoccurring cost	1 Strand Dark Fiber	\$	\$570.00
	2 Strands Dark Fiber		\$670.00
			Dollars

OPTION 2: LEASED DARK FIBER – Additional 60 Months			
One-time installation cost:		\$	\$1,700
			Dollars
Monthly reoccurring cost	1 Strand Dark Fiber	\$	\$570.00
	2 Strands Dark Fiber		\$670.00
			Dollars

4 Strands can be calculated using the 2 Strand Rate referenced above.

UNIT COSTS

One-time costs will be established for connection(s) to new facilities as well as the removal of connections in the event the District no longer requires services at said building.

Example would be new school requiring fiber optic connectivity or the closing and demolition of an existing school. It is expected that any new fiber links will be completed within 30 days of initial request of the District, or within 15 days of a signed contract by the District, whichever is sooner.

Item	Unit	Price
Addition of new Fiber Link	1 to 4 Stands Dark Fiber	\$1,700.00
Removal of Existing Fiber Link	1 to 4 Stands Dark Fiber	\$1,700.00
Relocation of Existing Fiber Link	1 to 4 Stands Dark Fiber	\$1,700.00

Upgrade from 10 to 40Gbps	One time cost	Monthly cost
Per link upgraded	No Bid	No Bid

Wave's standard installation intervals for existing facilities are 30-45 days from placement of Order and 3-6 months where facilities do not exist. The pricing referenced above is for existing facilities only.

Any new construction for new facilities will be billed at time and materials.

MUKILTEO SCHOOL DISTRICT – RFP #2018MSD-RFP
FIBER OPTIC CABLE INFRASTRUCTURE

PROJECT MANAGEMENT AND SUPERVISION

The Bidder proposes the following designated Project Manager, whose experience and qualifications shall be as described in the Instructions to Bidders, and **whose resumes indicating relevant experience, is enclosed with this Proposal.**

Melinda Hough, Implementation Project Manager II, Business Solutions
Project Manager

SURETY

If the Bidder is awarded a construction Contract on this Proposal, the Surety who provides the Performance Bond will be:

Surety Name

Street Address _____ City _____ State _____ Zip _____

Telephone Number _____

MUKILTEO SCHOOL DISTRICT – RFP #2018MSD-RFP
FIBER OPTIC CABLE INFRASTRUCTURE

BIDDER

The name of the Bidder submitting this Proposal is: Jeff Stoner, Strategic Account Executive

doing business at: WaveDivision Holdings LLC. (d/b/a) Wave business

Street 401 Parkplace Center, Suite 500 City Kirkland State WA Zip 98033

which is the address to which all communications concerned with this Proposal and with the Contract shall be sent.

The names of the principal officers of the corporation submitting this Proposal, or of the partners comprising the partnership, or of all persons interested in this Proposal as principals are as follows:

<u>Steve Weed, CEO</u>	<u>Harold Zeitz, COO</u>
<u>Wayne Schattenkerk, CFO</u>	<u>Jim Penny, General Counsel</u>
<u>Patrick Knorr, EVP Business Solutions</u>	<u>Paul Koss, Business Solutions</u>

Federal Tax Identification No: 45-0495565

Contractor's Washington Registration No: 602-274-233

Department of Labor and Industries Reg. No: WAVEDHL874CD

Washington State Department of Revenue No: 602-274-233

If Sole Proprietor or Partnership

IN WITNESS hereto the undersigned has set his/her hand this _____ day of _____, 2018.

Signature

Title

MUKILTEO SCHOOL DISTRICT – RFP #2018MSD-RFP
FIBER OPTIC CABLE INFRASTRUCTURE

If Corporation

IN WITNESS WHEREOF the undersigned corporation has caused this instrument to be executed by its
duly authorized officers this 22nd day of February, 2018.

WaveDivision Holdings LLC. (d/b/a) Wave business

Name of Corporation

Jeffrey Stoner

By

Jeff Stoner, Strategic Account Executive

Title

END OF BID FORMS

E-RATE 470 FIBER OPTIC CABLE INFRASTRUCTURE

Name	Firm	Address	Phone	Email
Glenn Sexton	NIS	4900 SW Griffith Drive Ste #250 Beaverton, Or 97005	971-256-9893	glenn.sexton@nis.consulting
Diane Forbes	NIS	4900 SW Griffith Drive Ste #250 Beaverton, Or 97005	971-256-9892	Diane.forbes@nis.consulting
Debbie Truax	MSD	9401 Sharon Drive, Everett, Washington 98204	425-356-1261	truaxd@mukilteo.wednet.edu
(representing Jeff Stoner)	Wave	401 Parkplace Center Suite 500 Kirkland, WA 98033	360.914.4541 (w) 206.228.5568 (m)	jstoner@wavebroadband.com

Vendor Name → Vendor Location →		Wave Kirkland, Washington		
Selection Criteria		Weight	Score	Weighted Score
Option→			Leased Dark Fiber Service	
E-Rate Eligible Recurring Cost – 35%				
	Weight	.35	10	35
	Score			
References – 20%				
	Weight	.20	10	20
	Score			
Prior Experience – 25%				
	Weight	.25	10	25
	Score			
Flexibility of Services – 10%				
	Weight	.10	8	8
	Score			
Qualifications – 10%				
	Weight	.1	10	10
	Score			
Total Weighted Score				98



INNOVATIVE INTEGRATED **INDEPENDENT**

March 5, 2018

Debbie Truax
Director of Technology Operations
Mukilteo School District No.6
9401 Sharon Drive - Everett, WA 98204

Dear Ms. Truax:

NIS has completed our evaluation of the response to RFP #2018MSD-RFP, *E-RATE 470 Fiber Optic Cable Infrastructure*. Our recommendation and a scoring matrix (based on criteria listed in the RFP) follow.

Recommendation:

NIS recommends the issuance of appropriate documents to WAVEDIVISION HOLDINGS, LLC to enter into a five year (60 month) contract to provide services as detailed in the RFP documents, specifically:

- A leased dark fiber solution that includes special construction, the monthly lease fee, maintenance, and operations for;
 - two discrete, dedicated strands of single-mode dark optical fibers connecting the District Office and each of:
 - District Services
 - Casino Road Facility
 - Horizon Elementary School
 - Olivia Park Elementary School
 - Lake Stickney Elementary School
 - Odyssey Elementary School
 - Pathfinder Kindergarten Center
 - ECEAP Facility
 - Serene Lake Elementary School
 - Picnic Point Elementary
 - Endeavour Elementary School
 - four, discrete, dedicated strands of fiber from the District Office to:
 - Olympic View Middle School
 - Kamiak High School
 - Mariner High School
- Pricing shall be:
 - \$670 per month for each two strand connection (11 sites x \$670) \$7,370
 - \$1,340 per month for each four strand connection (3 x \$1,340) \$4,020
 - **Per month cost (to be listed on E-Rate filing):** **\$11,390**
- There shall be no one time / non-reoccurring costs

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INNOVATIVE INTEGRATED INDEPENDENT

Scoring Matrix

Vendor Name → Vendor Location →		Wave Kirkland, Washington		
Selection Criteria		Weight	Score	Weighted Score
Option→			Leased Dark Fiber Service	
1. E-Rate Eligible Recurring Cost – 35%				
	Weight	.35	8	2.8
	Score			
2. References – 20%				
	Weight	.20	10	2.0
	Score			
3. Prior Experience – 25%				
	Weight	.25	10	2.5
	Score			
4. Flexibility of Services – 10%				
	Weight	.10	8	.8
	Score			
5. Qualifications – 10%				
	Weight	.1	10	1.0
	Score			
Total Weighted Score				9.1

Our scoring is based on the following:

1. The pricing returned by WAVE is an increase over current pricing. While NIS realizes that the costs for the initial installation have been long since recovered it is realistic to reflect inflation and maintenance fees associated with installed circuits. WAVE included an acceptable increase to current pricing.
2. References supplied are excellent. Districts on both sides of Mukilteo (Edmonds and Everett) are currently being supplied by WAVE. Both of these districts have no reservations in recommending WAVE.
3. Prior experience – WAVE is the incumbent at Mukilteo as well as numerous other districts. Their experiences are unmatched in terms of services and geographical footprint in the Washington K-12 schools.
4. Flexibility of services – NIS has a minor issue with WAVE taking exception to the contract language. While minor, NIS believes that the District is entitled to the NON-ASSIGNABILITY clause of the RFP as written.
5. Qualification – WAVE is certainly well qualified.

Please do not hesitate to contact me if additional information is required.

Glenn Sexton
President & Principal Consultant

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503-246-8585 | www.NIS.consulting

From: Truax Debbie M. <TruaxD@mukilteo.wednet.edu>
Sent: Friday, March 09, 2018 10:18 AM
To: 'Glenn Sexton'
Subject: RE: Wave bid: RFP #2018MSD-RFP

Thank you Glenn.

From: Glenn Sexton <glenn.sexton@nis.consulting>
Sent: Friday, March 9, 2018 10:09 AM
To: Truax Debbie M. <TruaxD@mukilteo.wednet.edu>
Subject: RE: Wave bid: RFP #2018MSD-RFP

See below – in blue.

I'm fine with this language. You have long standing relationship with Wave and they are a solid organization. I have no concerns that they will not continue to deliver excellent service.

Glenn Sexton | President & Principal Consultant



office 503-246-8585 (ext. 229) | **mobile** 503-807-7031
4900 SW Griffith Drive, Suite 250 | Beaverton, OR 97005
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From: Truax Debbie M. [mailto:TruaxD@mukilteo.wednet.edu]
Sent: Friday, March 09, 2018 7:54 AM
To: 'Glenn Sexton' <glenn.sexton@nis.consulting>
Subject: FW: Wave bid: RFP #2018MSD-RFP

Good morning Glenn,
I meant to reach out to you specifically yesterday and ask for your blessing on the statements that Jeffrey made to address the Contract Exceptions. He and I have agreed to strike out all of the exceptions from the proposal and use the language in the MSA which is what is in green below, but I want to doublecheck that you agree that this language is good and appropriate. They are adding the other clauses to the MSA today for employees on school grounds, etc., so we should be good, but would you be able to take a few minutes and just read what is in GREEN below to address the 3 exceptions and just confirm for me that you are ok with it too?
Thank you ... almost there!
Happy Friday!
Debbie

From: Jeffrey Stoner <jstoner@wavebusiness.com>
Sent: Wednesday, March 7, 2018 11:31 AM
To: Truax Debbie M. <TruaxD@mukilteo.wednet.edu>
Cc: Dan Littlefield <dlittlefield@wavebusiness.com>; 'Glenn Sexton' <glenn.sexton@nis.consulting>; Trisler D. Brooke <TrislerDB@mukilteo.wednet.edu>
Subject: RE: Wave bid: RFP #2018MSD-RFP

Hi Debbie,

Please find Wave Order, MSA, and Terms attached.
My comments are in green below. Please let me know if you have any questions.
Assuming the District is good with the Order and MSA language, they are ready for signature.

Thank you!
Jeff

Jeff Stoner
360.914.4541 (w)
206.228.5568 (m)
jstoner@wavebusiness.com

From: Truax Debbie M. [mailto:TruaxD@mukilteo.wednet.edu]
Sent: Tuesday, March 06, 2018 8:45 AM
To: Jeffrey Stoner
Cc: Dan Littlefield; 'Glenn Sexton'; Trisler D. Brooke
Subject: RE: Wave bid: RFP #2018MSD-RFP
Importance: High

Good morning Jeff,
I wanted to get back to you concerning your response. NIS and Mukilteo have evaluated the proposal that WAVE has submitted, and NIS has provided me with a scoring mechanism to satisfy how well your proposal has satisfied the proposal requirements as well to satisfy our eRate documentation. As a result of these actions, Mukilteo School District would like to select WAVE as our continued provider but we must agree to the Contract terms and I am afraid that we are not quite there. I have a couple of questions for clarification, and the main areas in question are concerning the "Contract Exceptions" you have added on Page 19-20 as follows:

Question #1: In the "2018MSD-RFP..." document, on page 22 under Option 2: Leased Dark Fiber, it seems to be that there will be a one-time cost except for new or changed sites (like addition, removal or

relocation of existing fiber link), and this is kind of what we did at Fairmount and Pathfinder this past summer so that makes sense, but what does the "OPTION 2: LEASED DARK FIBER - Additional 60 Months" mean in terms of having a One-time installation cost shown on that page? Are you stating that there would be a one-time cost for renewing a second 60 months or is this still just for "changes". Would you please clarify?

Please see Section 1 on the Dark Fiber Service Order attached. No NRC will be Charged for the Renewal. The One-time "UNIT COSTS" on the RFP are for changes to existing locations. For example, if the High School needed 2 additional Dark Fiber Strands for video surveillance then Wave would charge the District a one-time amount of \$1,700.00 to splice additional fibers into the network.

I'm okay with this – there should be no charge for renewal but it is reasonable to charge for a physical addition to their installed plant.

Question #2: In the "2018MSD-RFP..." document, also on page 22 and anywhere else in the response, is there a clear provision for Mukilteo School District to renew for a second 60 month term as prescribed in the RFP? This is highly desired and so I just want to be certain that it is very clear that we would have this option if so exercised, just like we did with the last 5, or 10 year, Contract. If this is what is intended, would you please make it more explicit? OR should this provision be added to the MSA in section 2.1 as an option... what are your thoughts?

Please see Section 2 on the Dark Fiber Order attached.

Section 2: Service Term. The Service Term for the Services is five (5) years. Customer shall have the option to renew this Service Order for five (5) renewal terms of one (1) year each (each, a "Renewal Term"). To exercise any of its renewal options, Customer must deliver written notice of renewal to Provider at least sixty (60) days prior to the expiration of the Service Term or the then-current Renewal Term, as applicable.

I'm good with this - just need to make sure to start the E-rate process in advance to meet their 60 day window.

Question #3: On page 19 of the "Wave Response..." document where the **CONTRACT EXCEPTIONS** are listed. Our CTO and I want to be reasonable with the "non-assignability" clause requested changes, but we also must look out for the District's best interests. I don't think that I am bound to using the word 'consent' because we don't need to tell you how to conduct your business but any change in business processes that would or even could upset the terms and conditions anticipated with this mutual contract need to be completely protected. I have been advised to throw out your requested text and would need to reject your additional language, unless you can come up with working that completely protects Mukilteo and includes providing written information and the provision for Mukilteo being asked to provide acknowledgement but only if guaranteed that the Contract will be fully supported to the end... let me know your thoughts on language. PLEASE see my edits to the 2nd and 3rd exceptions and update that portion of the agreement if approved.

NON-ASSIGNABILITY: The successful bidder shall not assign any portion of the Contract. The successful bidder may not confer an assignment on any third person by any other means without prior written consent of MSD. This provision shall apply to all transfers by operation of law, and transfers to and by trustees in bankruptcy, receivers, personal representatives, and legatees. ~~Contractor requests the right, without the necessity of obtaining MSD's consent, to assign its interest in and to the Contract to either of the following: (i) an entity controlled by, controlling, or under common control with Contractor; or (ii) an entity acquiring Contractor, whether through merger or through purchase of substantially all the assets of Contractor.~~

Please see Article 12 – Assignment and Assumption on the Wave MSA attached.

ARTICLE 12 – ASSIGNMENT AND ASSUMPTION

Except as otherwise provided in this Article 12, neither Party shall assign, delegate or otherwise transfer the Agreement MASTER SERVICES AGREEMENT FOR ENTERPRISE SERVICES: Washington E-Rate Customer pg. 7 WaveDivision Holdings, LLC / Mukilteo School District No. 6 02/26/2018 or its obligations under the Agreement, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the necessity of obtaining the other Party's consent, assign its interest in and to the Agreement to: (i) any entity acquiring such Party, whether by merger or through purchase of substantially all the assets of such Party; (ii) a lender as an asset securing indebtedness; or (iii) an Affiliate of such party; provided, that in the event of a transfer to an Affiliate, the transferring Party shall continue to remain liable for the obligations under the Agreement.

Good – key is, "...the transferring Party shall continue to remain liable for the obligations under the Agreement." They (Wave) is acting responsible with this language.

TERMINATION FOR DEFAULT OF CONTRACTOR: Time and the strict and literal performance on the part of the contractor of every term and condition of the contract as specified in the contract documents are of the essence. Upon the willful failure or refusal on the part of the contractor to perform on such term or condition, MSD at its election, without prejudice to any other right or remedy, may cause the same to be performed by others, and any additional cost on account thereof shall be reimbursed forthwith by the contractor.

Contractor requests written notice and a reasonable opportunity, **defined as a 30-45 day period by MSD**, to cure any failure in performance prior to MSD declaring Contractor to be in default.

Please see Article 5 & 6 on the Wave MSA attached.

ARTICLE 5 – DEFAULT AND REMEDIES

5.1 Customer Default. Each of the following shall constitute a default by Customer under this Agreement (each a separate event of "**Default**"): (i) if Customer fails to pay any undisputed Fees when due, the failure of Customer to cure same within ten (10) days after receiving written notice from Provider regarding such failure to pay; (ii) if Customer fails to comply with any other material provision of this Agreement, the failure of Customer to cure same within thirty (30) days of receiving written notice from Provider regarding such non-compliance; or (iii) if Customer files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days. Standard language – bear in mind this is written for private entities, i.e., Fred Myer or Fore Motor Company, not a public entity. There is almost a zero chance that the District would ever default and if such were to happen, there would be much bigger issues to deal with and Wave would fall into a court ordered sequence for remediation and debt discharge.

5.2 Remedies for Customer Default. In the event of a Default by Customer under this Agreement, Provider may, at its option: (i) suspend any applicable Services until such time as the Customer Default has been corrected (provided, however, that any suspension shall not relieve Customer's on-going obligation to pay Provider all Fees and other amounts due under the Agreement as if such suspension of Services had not taken place); (ii) terminate the applicable Service(s) and/or the applicable Service Order(s); (iii) after the occurrence of any two Customer Defaults in any twelve (12) month period, terminate this MSA and all Service Orders entered into pursuant to this MSA; and/or (iv) pursue any other remedy available to Provider under this Agreement or applicable law. If Provider terminates one or more Service Orders due to Customer Default, Customer shall pay a "**Termination Charge**" to Provider equal to the sum of the following: (a) all unpaid amounts for Services actually provided prior to the termination date for the Service Order at issue; and (b) a percentage of all remaining MRCs Customer was to pay Provider for the remainder of the applicable Service Term (the "**Remaining Monthly Service Charges**"). If a Termination Charge is incurred during the first year of the Service Term, the percentage of the Remaining Monthly Service Charges due shall be one hundred percent (100%). If a Termination Charge is incurred during the second or third year of the Service Term, the percentage of the Remaining Monthly Service Charges due shall be seventy-five percent (75%). If a Termination Charge is incurred during or after the fourth year of the Service Term, the percentage of the Remaining Monthly Service Charges due shall be fifty percent (50%). If incurred, the Termination Charge will be due and payable within thirty (30) days after the termination date of the

Service at issue. (In the very unlikely event conditions arose causing premature termination, no court in America would enforce these provisions against a public entity – especially a school district. It would be a negotiated settlement behind closed doors.) Customer acknowledges that the calculation of the Termination Charge is a genuine estimate of Provider's actual damages and is not a penalty.

5.3 Provider Default. Each of the following shall constitute a Default by Provider under this Agreement: (i) if Provider fails to comply with any material provision of this Agreement other than provisions of the SLA, the failure by Provider to cure same within thirty (30) days of receiving written notice from Customer regarding such non-compliance; or (ii) Provider files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

5.4 Remedies for Provider Default. In the event of a Default by Provider under this Agreement Customer may, at its option: (i) terminate the applicable Service(s) and/or the applicable Service Order(s); (ii) terminate this MSA and all Service Orders entered into pursuant to this MSA; and/or (iii) pursue any other remedy available to Customer under this Agreement or applicable law. Early termination by customer shall be accomplished by providing termination notice to disconnects@wavebroadband.com and to the notice address specified in Article 13 below. In the event of early termination for Provider Default pursuant to this Section 5.4, Provider shall reimburse Customer for any pre-paid, unused monthly service Fees attributable to the terminated Service(s) and/or Service Order(s), and Customer shall have no further liability to Provider for the terminated Service(s) and/or Service Order(s). Early termination by Customer pursuant to this Section 5.4 shall not relieve Customer of its obligations to pay all Fees incurred prior to the early termination date. (Excellent)

ARTICLE 6 – EARLY TERMINATION & PORTABILITY

6.1 Early Termination for Customer Convenience.

(a) E-Rate Funding Contingency. Customer is a participant in the Federal Universal Service Discount program for schools and libraries ("E-Rate"), offered by the Federal Communications Commission via the Schools and Libraries Division (the "SLD"). Customer may enter into one or more Service Orders with Provider to purchase Services through the E-Rate program. Should Customer enter into any Service Order with Provider for Services that Customer intends to fund, in whole or in part, through the E-Rate program, then Customer shall have the right to discontinue any one or more of such Services and/or terminate the corresponding Service Order(s) if Customer's request for E-Rate funding is denied, cancelled or otherwise discontinued by SLD. In such event, Customer shall deliver no less than thirty (30) days' advance written notice of termination to Provider specifying which Service or Services and/or which Service Order or Service Orders are being terminated and the date on which such early termination shall occur. Customer shall remain obligated to pay for all Services delivered through the date of termination. (Again – standard [and very good I might add] language that protects the District in the event of an E-Rate implosion.)

(b) Non-Appropriation Contingency. Customer is a public entity subject to legislative appropriation requirements. As a general matter, Customer cannot legally be obligated to make payments for Services that are provided after the end of the fiscal period in which Customer executes a particular Service Order. In the event that, for any future fiscal period, sufficient funds are not appropriated or allocated for payment of any one or more Service Orders, Customer may terminate the Service Order at issue as a matter of public convenience as provided herein. If and when Customer becomes aware that non-allocation of funds for the coming fiscal period appears likely, Customer shall use reasonable efforts to notify Provider of that possibility prior to the end of the then-current fiscal period. (Excellent) Once the non-appropriation decision has been made, Customer shall, as soon as reasonably practicable, deliver written notice of termination for non-appropriation to Provider specifying which Service or Services and/or which Service Order or Service Orders are being terminated for non-appropriation and the date on which such early termination shall occur. Customer shall remain obligated to pay for all Services delivered through the date of termination.

6.2 Early Termination for Default. As set forth in Article 5 above, either Party may elect to terminate this MSA and/or one or more Service Orders prior to the scheduled Expiration Date in the event of an uncured Default by the other Party.

6.3 Portability; Substitution of Services. At any time during the Service Term of a Service Order, Customer may elect to substitute new Services for then-existing Services. In such event, Provider will waive the Termination

Charge associated with the termination of the then-existing Services as long as: (i) the Fees payable to Provider in connection with the substitute Services are equal to or greater than the Fees of the discontinued Services; (ii) Customer commits to retain the substitute Services for the remainder of the Service Term for the discontinued Services; and (iii) Customer pays all applicable installation and other NRCs, if any, for provision of the substitute Services.

TERMINATION OF CONTRACT FOR CAUSE: If, the Contractor fails to fulfill in timely and proper manner his obligations under this contract or if the Contractor violates any of the covenants, agreements, or stipulations of the contract, MSD shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. Notwithstanding the above, the Contractor shall not be relieved of liability to MSD for damages sustained by MSD by virtue of any breach of the contract by the Contractor, and MSD may withhold any payments to the Contractor until such time as the exact amount of damages due MSD from the Contractor is determined. In addition, MSD may terminate this agreement, in whole or in part, for its convenience by giving vendor sixty (60) days written notice of intent to terminate.

Contractor requests written notice and a reasonable opportunity, *defined as a 30-45 day period by MSD*, to cure any failure in performance prior to MSD declaring Contractor to be in default.

Please see Article 5 & 6 referenced above.

PLEASE NOTE: My last task is to work through the WAVE business Master Services Agreement (MSA) and will have a few minor tweaks to that, but nothing really substantial. I was able to locate your AUP online at: <http://wavebusiness.com/commercial-AUP> to confirm what is stated, but was unable to locate the <http://wavebusiness.com/serviceterms> document also mentioned. Could you please provide the content of what is referred to on Page 1 of the Master Agreement, section 1.3

Please find ServiceSpecificTerms08302017.pdf attached. This is the document that <http://wavebusiness.com/serviceterms> points to.

I should have all remaining questions or needs to you by the end of the day today or tonight. I need to finalize a contract by tomorrow or Thursday at the latest in order to get it to the School Board on Monday evening and signed/finalized by next week per the RFP schedule requirements for eRate, and then file my Form 471. Please let me know what I can do to help expedite this process working together with you Jeff.

Thank you,
Debbie

Deborah M. Truax
Director of Technology Operations
Mukilteo School District No.6

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GEM & Strategic Accounts
President's Club Winner 2016

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